

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

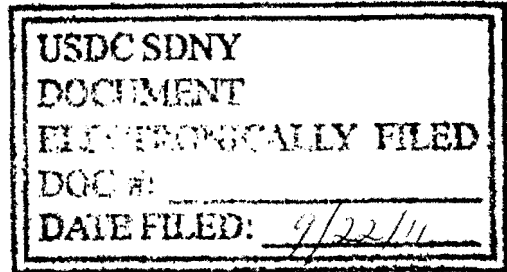
CRISTINO CONTRERAS,

Petitioner,

v.

JOSEPH T. SMITH,

Respondent.



07 Civ. 5532 (RO)

ORDER

OWEN, District Judge:

Pro se Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2254 in order to challenge his conviction on the following grounds: 1) the testimony of a witness at trial exceeded its proper bounds and should have been excluded; 2) the joint representation of Petitioner and his brother by the same law firm deprived Petitioner of the effective assistance of conflict-free counsel; 3) the Trial Court improperly excluded an affidavit which potentially exculpated Petitioner; and 4) Petitioner's appellate counsel was ineffective for failing to challenge the legal sufficiency of the prosecution's evidence.

Petitioner was convicted after a jury trial of criminal possession of a controlled substance in the first degree (N.Y. Penal L. § 220.21(1)), criminal possession of a controlled substance in the third degree (N.Y. Penal L. § 220.16(1)), and conspiracy in the second degree (N.Y. Penal L. § 105.15). Petitioner was sentenced to an indeterminate term of imprisonment of twenty-five years to life, a concurrent indeterminate term of eight and one-third to twenty-five years, and a

consecutive indeterminate term of three to nine years, and is on conditional parole in order to be deported.

Petitioner filed the instant petition on June 11, 2007. On January 5, 2011, Magistrate Judge Henry Pitman filed a Report and Recommendation in which he recommended that the petition be denied. Petitioner did not file an objection to the Report and Recommendation. On June 1, 2011, this case was transferred to this Court.

United States Magistrate Judges hear dispositive motions and make proposed findings of fact and recommendations, generally in the form of a Report and Recommendation. District courts review those orders under a clearly erroneous or contrary to law standard of review. 28 U.S.C. § 636(b)(1)(A). In the event that a party files objections to the magistrate judge's recommendations, district courts conduct a *de novo* review of those matters to which a party filed an objection. *Id.* § 636(b)(1)(B), (C). *First Union Mortgage Corp., v. Smith*, 229 F.3d 992, 995 (10th Cir. 2000).

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where no timely objection has been made by either party, a district court need only find that “there is no clear error on the face of the record” in order to accept the Report and Recommendation. *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted). This standard of review must be applied while remaining cognizant of the court's obligation to construe a pro se litigant's submissions liberally in the light that they raise the strongest possible arguments that they suggest. *See Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006)(citations omitted).

This Court finds that Judge Pitman's Report and Recommendation is thorough, well-reasoned, and supported by law. Accordingly, this Court concurs with the Report and Recommendation, in its entirety, and adopts it as the Order of this Court. The petition is therefore denied. Additionally, Petitioner has not made a substantial showing of the denial of a constitutional right, and accordingly, a certificate of appealability shall not issue. 28 U.S.C. § 2253; *Middleton v. Attorneys Gen.*, 396 F.3d 207, 209 (2d Cir. 2005). Certification pursuant to 28 U.S.C. § 1915(a)(3) shall not issue because any appeal from this Order would not be taken in good faith. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962).

SO ORDERED.

September 17, 2011



RICHARD OWEN
UNITED STATES DISTRICT JUDGE